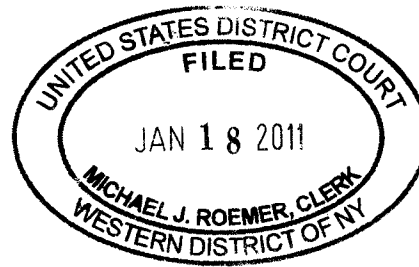


UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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-PS-O-

KENNETH J. PHELAN, 09A1183,

Plaintiff,

-v-

S. ECKERT and J. BERBARY,

Defendants.

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**DECISION and ORDER**  
10-CV-6612CJS(Fe)

Plaintiff, Kenneth Phelan, currently an inmate of the Great Meadow Correctional Facility, filed this *pro se* action seeking relief under 42 U.S.C. § 1983 (Docket No. 1) and has both requested permission to proceed *in forma pauperis* and filed a signed Authorization (Docket No. 4). Plaintiff filed this same action in the Northern District of New York on March 22, 2010, which was transferred to this Court on April 9, 2010. That action was dismissed in this Court on April 26, 2010, appealed to the Court of Appeals, and dismissed for lacking an arguable basis in law or fact on August 30, 2010 (10-CV-6205Fe, Docket nos. 6 and 9). The instant action is, therefore, dismissed as duplicative of the prior action. The Clerk of Court is directed to close this action as filed in error.

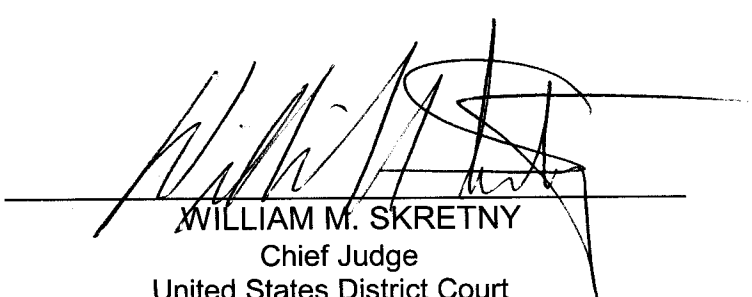
Plaintiff is warned that his right to pursue further relief in federal court at public expense will be greatly curtailed if he has three actions or appeals dismissed under the provisions of 28 U.S.C. §§ 1915(e)(2)(B) and 1915A. See 28 U.S.C. § 1915(g). The dismissal of the original action and the appeal thereof both can be counted as dismissals under this provision. Plaintiff is cautioned that he may lose the ability to file any further actions without pre-payment during his incarceration if he has any further actions

dismissed as frivolous or malicious, failing to state a claim upon which relief may be granted, or seeking monetary relief against a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B).

SO ORDERED.

Dated:

1/15, 2010  
Buffalo, New York



WILLIAM M. SKRETNY  
Chief Judge  
United States District Court